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ARNOLD A. MCCLELLAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

12 SECURITIES AND EXCHANGE COMMISSION.

Plaintiff,

V.

ARNOLD A. MCCLELLAN and
ANNABELLE MCCLELLAN,

Defendants.

Case No. 10-CV-05412-WHA

**DEFENDANT ARNOLD A.
MCCLELLAN'S ANSWER TO
COMPLAINT**

Judge: Hon. William H. Alsup
Date Filed: November 30, 2010

DEMAND FOR JURY TRIAL

1 Defendant Arnold A. McClellan (“Mr. McClellan”), for himself and for no
2 other defendant, hereby answers and otherwise responds to the Securities and
3 Exchange Commission’s (“SEC”) Complaint as follows. As to any allegation not
4 specifically admitted, Mr. McClellan denies the allegation.

5 1. In answer to Paragraph 1, Mr. McClellan admits that from 1995 until
6 2010, he was a mergers and acquisitions tax partner at Deloitte Tax LLP
7 (“Deloitte”). Except as so admitted, Mr. McClellan denies each and every
8 allegation set forth in Paragraph 1. To the extent that the allegations in Paragraph 1
9 are directed to individuals other than Mr. McClellan, Mr. McClellan denies each
10 and every allegation in Paragraph 1 on the ground that he is without knowledge or
11 information sufficient to form a belief as to the truth thereof.

12 2. In answer to Paragraph 2, Mr. McClellan denies each and every
13 allegation in Paragraph 2 on the ground that he is without knowledge or
14 information sufficient to form a belief as to the truth thereof.

15 3. In answer to Paragraph 3, Mr. McClellan denies each and every
16 allegation in Paragraph 3 on the ground that he is without knowledge or
17 information sufficient to form a belief as to the truth thereof.

18 4. In answer to Paragraph 4, Mr. McClellan admits that he signed a
19 confidentiality agreement in connection with a client’s effort to acquire Kronos,
20 Inc., which purported to be a software company with headquarters in
21 Massachusetts, and admits that on March 23, 2007, Kronos announced that it had
22 signed a definitive agreement to be acquired. Except as so admitted, Mr. McClellan
23 denies each and every allegation in Paragraph 4 on the ground that he is without
24 knowledge or information sufficient to form a belief as to the truth thereof.

25 5. In answer to Paragraph 5, Mr. McClellan admits that in May 2007 he
26 performed work in connection with a client’s planned acquisition of aQuantive,
27 Inc., which purported to be a digital advertising and marketing company with
28 headquarters in Seattle, Washington, and admits that Microsoft Corporation’s

1 acquisition of aQuantive was announced on May 18, 2007. Except as so admitted,
2 Mr. McClellan denies each and every allegation in Paragraph 5 on the ground that
3 he is without knowledge or information sufficient to form a belief as to the truth
4 thereof.

5 6. In answer to Paragraph 6, Mr. McClellan admits that in December
6 2007 he performed work in connection with a client's planned acquisition of Getty
7 Images, Inc., and admits that Getty Images announced on February 25, 2008, that it
8 would be acquired by affiliates of Hellman & Friedman LLC. Except as so
9 admitted, Mr. McClellan denies each and every allegation in Paragraph 6 on the
10 ground that he is without knowledge or information sufficient to form a belief as to
11 the truth thereof.

12 7. In answer to Paragraph 7, Mr. McClellan denies each and every
13 allegation in Paragraph 7 on the ground that he is without knowledge or
14 information sufficient to form a belief as to the truth thereof.

15 8. In answer to Paragraph 8, Mr. McClellan denies each and every
16 allegation in Paragraph 8.

17 9. In answer to Paragraph 9, Mr. McClellan denies each and every
18 allegation in Paragraph 9.

19 10. In answer to Paragraph 10, Mr. McClellan denies each and every
20 allegation in Paragraph 10. To the extent that the allegations in Paragraph 10 are
21 directed to individuals other than Mr. McClellan, Mr. McClellan denies each and
22 every allegation in Paragraph 10 on the ground that he is without knowledge or
23 information sufficient to form a belief as to the truth thereof.

24 11. In answer to Paragraph 11, Mr. McClellan denies each and every
25 allegation in Paragraph 11.

26 12. In answer to Paragraph 12, Mr. McClellan denies each and every
27 allegation in Paragraph 12.

28 13. In answer to Paragraph 13, Mr. McClellan admits that he was born in

1 1959 and is a resident of San Francisco, California. Mr. McClellan admits that
2 from 1995 until 2010, he was a mergers and acquisitions tax partner at Deloitte.
3 Mr. McClellan admits that he worked in Deloitte's offices located in San Francisco
4 and for a period of time served as the head of one of Deloitte's regional mergers
5 and acquisitions teams. Mr. McClellan admits that he is a Certified Public
6 Accountant licensed in California and Georgia. Except as so admitted, Mr.
7 McClellan denies each and every allegation in Paragraph 13.

8 14. In answer to Paragraph 14, Mr. McClellan admits that Annabel
9 McClellan was born in 1972 and is a resident of San Francisco, California, admits
10 that he and Annabel McClellan have been married since 1996, and admits, based on
11 information and belief, that Annabel McClellan worked during various periods of
12 time at Deloitte's offices located in London, San Jose, and San Francisco. Except
13 as so admitted, Mr. McClellan denies each and every allegation in Paragraph 14 on
14 the ground that he is without knowledge or information sufficient to form a belief
15 as to the truth thereof.

16 15. In answer to Paragraph 15, Mr. McClellan admits, based on
17 information and belief, that James Sanders is married to Miranda Sanders. Except
18 as so admitted, Mr. McClellan denies each and every allegation in Paragraph 15 on
19 the ground that he is without knowledge or information sufficient to form a belief
20 as to the truth thereof.

21 16. In answer to Paragraph 16, Mr. McClellan admits, based on
22 information and belief, that Miranda Sanders is the sister of Annabel Sanders and
23 the wife of James Sanders. Except as so admitted, Mr. McClellan denies each and
24 every allegation in Paragraph 16 on the ground that he is without knowledge or
25 information sufficient to form a belief as to the truth thereof.

26 17. In answer to Paragraph 17, Mr. McClellan denies each and every
27 allegation in Paragraph 17 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 18. In answer to Paragraph 18, Mr. McClellan denies each and every
2 allegation in Paragraph 18 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 19. In answer to Paragraph 19, Mr. McClellan admits that, prior to its
5 merger with McKesson Corporation, Per Se Technologies, Inc. purported to be a
6 healthcare technology company and a Delaware Corporation with headquarters in
7 Alpharetta, Georgia, and that shares of its common stock were publicly traded on
8 NASDAQ. Except as so admitted, Mr. McClellan denies each and every allegation
9 in Paragraph 19 on the ground that he is without knowledge or information
10 sufficient to form a belief as to the truth thereof.

11 20. In answer to Paragraph 20, Mr. McClellan admits that, prior to its
12 acquisition by affiliates of Hellman & Friedman LLC, Kronos, Inc. purported to
13 provide data collection systems, labor management analysis and payroll software,
14 and to be a Massachusetts corporation with headquarters in Chelmsford,
15 Massachusetts and that shares of its common stock were publicly traded on
16 NASDAQ. Except as so admitted, Mr. McClellan denies each and every allegation
17 in Paragraph 20 on the ground that he is without knowledge or information
18 sufficient to form a belief as to the truth thereof.

19 21. In answer to Paragraph 21, Mr. McClellan admits that, prior to its
20 acquisition by Microsoft Corporation, aQuantive, Inc. purported to be a digital
21 advertising and marketing company and a Washington corporation with
22 headquarters in Seattle, Washington, and that shares of its common stock were
23 publicly traded on NASDAQ. Except as so admitted, Mr. McClellan denies each
24 and every allegation in Paragraph 21 on the ground that he is without knowledge or
25 information sufficient to form a belief as to the truth thereof.

26 22. In answer to Paragraph 22, Mr. McClellan denies each and every
27 allegation in Paragraph 22 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 23. In answer to Paragraph 23, Mr. McClellan denies each and every
2 allegation in Paragraph 23 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 24. In answer to Paragraph 24, Mr. McClellan admits that, prior to its
5 acquisition by Hellman & Friedman LLC, Getty Images, Inc. purported to purchase
6 and license photographs and other visual content and to be a Delaware corporation
7 with headquarters in Seattle, Washington, and that shares of Getty Image's common
8 stock were publicly traded on the New York Stock Exchange. Except as so
9 admitted, Mr. McClellan denies each and every allegation in Paragraph 24 on the
10 ground that he is without knowledge or information sufficient to form a belief as to
11 the truth thereof.

12 25. In answer to Paragraph 25, Mr. McClellan admits that he was a
13 mergers and acquisitions tax partner at Deloitte from 1995 through June 2010. Mr.
14 McClellan admits that for a period of time he led a regional mergers and
15 acquisitions team. Mr. McClellan admits that he provided clients with certain
16 advice, including tax structuring, due diligence, and accounting advice related to
17 mergers and acquisitions. Except as so admitted, Mr. McClellan denies each and
18 every allegation in Paragraph 25.

19 26. In answer to Paragraph 26, Mr. McClellan admits that he was aware of
20 certain potential transactions regarding Deloitte's clients through his position at
21 Deloitte. Except as so admitted, Mr. McClellan denies each and every allegation in
22 Paragraph 26 on the ground that he is without knowledge or information sufficient
23 to form a belief as to the truth thereof.

24 27. In answer to Paragraph 27, Mr. McClellan admits that Deloitte had
25 certain policies concerning confidential information and trading in certain
26 securities. To the extent that the allegations in Paragraph 27 refer to the contents of
27 those Deloitte policies, those documents speak for themselves and therefore no
28 response from Mr. McClellan is required. Except as so admitted and to the extent

1 that a response is deemed necessary, Mr. McClellan denies each and every
2 allegation in Paragraph 27 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 28. In answer to Paragraph 28, Mr. McClellan admits that Deloitte had
5 certain policies concerning confidential information and trading in certain
6 securities. To the extent that the allegations in Paragraph 28 refer to the contents of
7 those Deloitte policies, those documents speak for themselves and therefore no
8 response from Mr. McClellan is required. Except as so admitted and to the extent
9 that a response is deemed necessary, Mr. McClellan denies each and every
10 allegation in Paragraph 28 on the ground that he is without knowledge or
11 information sufficient to form a belief as to the truth thereof.

12 29. In answer to Paragraph 29, Mr. McClellan admits that Deloitte had
13 certain policies concerning confidential information and trading in certain
14 securities, that Deloitte entered into certain confidentiality agreements and that, in
15 some instances, Mr. McClellan signed those confidentiality agreements. To the
16 extent that the allegations in Paragraph 29 refer to the contents of those Deloitte
17 policies or those confidentiality agreements, those documents speak for themselves
18 and therefore no response from Mr. McClellan is required. Except as so admitted
19 and to the extent that a response is deemed necessary, Mr. McClellan denies each
20 and every allegation in Paragraph 29 on the ground that he is without knowledge or
21 information sufficient to form a belief as to the truth thereof.

22 30. In answer to Paragraph 30, Mr. McClellan denies each and every
23 allegation in Paragraph 30.

24 31. In answer to Paragraph 31, Mr. McClellan denies each and every
25 allegation in Paragraph 31 relating to Mr. McClellan. Except as so denied, Mr.
26 McClellan denies each and every allegation in Paragraph 31 on the ground that he
27 is without knowledge or information sufficient to form a belief as to the truth
28 thereof.

1 32. In answer to Paragraph 32, Mr. McClellan denies each and every
2 allegation in Paragraph 32 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 33. In answer to Paragraph 33, Mr. McClellan denies each and every
5 allegation in Paragraph 33 on the ground that he is without knowledge or
6 information sufficient to form a belief as to the truth thereof.

7 34. In answer to Paragraph 34, Mr. McClellan denies each and every
8 allegation in Paragraph 34 on the ground that he is without knowledge or
9 information sufficient to form a belief as to the truth thereof.

10 35. In answer to Paragraph 35, Mr. McClellan denies each and every
11 allegation in Paragraph 35 on the ground that he is without knowledge or
12 information sufficient to form a belief as to the truth thereof.

13 36. In answer to Paragraph 36, Mr. McClellan denies each and every
14 allegation in Paragraph 36 on the ground that he is without knowledge or
15 information sufficient to form a belief as to the truth thereof.

16 37. In answer to Paragraph 37, Mr. McClellan denies each and every
17 allegation in Paragraph 37 on the ground that he is without knowledge or
18 information sufficient to form a belief as to the truth thereof.

19 38. In answer to Paragraph 38, Mr. McClellan denies each and every
20 allegation in Paragraph 38 on the ground that he is without knowledge or
21 information sufficient to form a belief as to the truth thereof.

22 39. In answer to Paragraph 39, Mr. McClellan denies each and every
23 allegation in Paragraph 39.

24 40. In answer to Paragraph 40, Mr. McClellan denies each and every
25 allegation in Paragraph 40 on the ground that he is without knowledge or
26 information sufficient to form a belief as to the truth thereof.

27 41. In answer to Paragraph 41, Mr. McClellan denies each and every
28 allegation in Paragraph 41 on the ground that he is without knowledge or

1 information sufficient to form a belief as to the truth thereof.

2 42. In answer to Paragraph 42, Mr. McClellan denies each and every
3 allegation in Paragraph 42 on the ground that he is without knowledge or
4 information sufficient to form a belief as to the truth thereof.

5 43. In answer to Paragraph 43, Mr. McClellan denies each and every
6 allegation in Paragraph 43 on the ground that he is without knowledge or
7 information sufficient to form a belief as to the truth thereof.

8 44. In answer to Paragraph 44, Mr. McClellan denies each and every
9 allegation in Paragraph 44 on the ground that he is without knowledge or
10 information sufficient to form a belief as to the truth thereof.

11 45. In answer to Paragraph 45, Mr. McClellan admits that James and
12 Miranda Sanders visited San Francisco and stayed in Mr. and Mrs. McClellan's
13 home in October 2006. Except as so admitted, Mr. McClellan denies each and
14 every allegation in Paragraph 45 on the ground that he is without knowledge or
15 information sufficient to form a belief as to the truth thereof.

16 46. In answer to Paragraph 46, Mr. McClellan denies each and every
17 allegation in Paragraph 46 on the ground that he is without knowledge or
18 information sufficient to form a belief as to the truth thereof.

19 47. In answer to Paragraph 47, Mr. McClellan denies each and every
20 allegation in Paragraph 47.

21 48. In answer to Paragraph 48, Mr. McClellan denies that he disclosed or
22 misappropriated any confidential information as alleged in Paragraph 48. Except as
23 so denied, Mr. McClellan denies each and every allegation in Paragraph 48 on the
24 ground that he is without knowledge or information sufficient to form a belief as to
25 the truth thereof.

26 49. In answer to Paragraph 49, Mr. McClellan denies each and every
27 allegation in Paragraph 49 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 50. In answer to Paragraph 50, Mr. McClellan denies each and every
2 allegation in Paragraph 50 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 51. In answer to Paragraph 51, Mr. McClellan admits that James and
5 Miranda Sanders visited San Francisco and stayed in Mr. and Mrs. McClellan's
6 home in October 2006. Mr. McClellan admits that he provided advice to
7 McKesson Corporation in connection with its possible acquisition of Per Se
8 Technologies, Inc. Except as so admitted, Mr. McClellan denies each and every
9 allegation in Paragraph 51 on the ground that he is without knowledge or
10 information sufficient to form a belief as to the truth thereof.

11 52. In answer to Paragraph 52, Mr. McClellan admits that in 2006 he
12 recorded time in connection with McKesson Corporation's planned acquisition of
13 Per Se Technologies, Inc. Except as so admitted, Mr. McClellan denies each and
14 every allegation in Paragraph 52 on the ground that he is without knowledge or
15 information sufficient to form a belief as to the truth thereof.

16 53. In answer to Paragraph 53, Mr. McClellan denies each and every
17 allegation in Paragraph 53 on the ground that he is without knowledge or
18 information sufficient to form a belief as to the truth thereof.

19 54. In answer to Paragraph 54, Mr. McClellan admits that he was aware at
20 some point in time that McKesson Corporation was seeking to acquire Per Se
21 Technologies, Inc. Except as so admitted, Mr. McClellan denies each and every
22 allegation in Paragraph 54 on the ground that he is without knowledge or
23 information sufficient to form a belief as to the truth thereof.

24 55. In answer to Paragraph 55, Mr. McClellan admits that during October
25 2006, he and members of Deloitte's tax mergers and acquisitions group met with
26 representatives of Per Se Technologies, Inc. in Atlanta, Georgia.

27 56. In answer to Paragraph 56, Mr. McClellan admits that on October 27,
28 2006, he received an email that stated the "deal is a go." Except as so admitted, Mr.

1 McClellan denies each and every allegation in Paragraph 56 on the ground that he
2 is without knowledge or information sufficient to form a belief as to the truth
3 thereof.

4 57. In answer to Paragraph 57, Mr. McClellan denies each and every
5 allegation in Paragraph 57.

6 58. In answer to Paragraph 58, Mr. McClellan denies that he disclosed or
7 misappropriated any confidential information as alleged in Paragraph 58. Except as
8 so denied, Mr. McClellan denies each and every allegation in Paragraph 58 on the
9 ground that he is without knowledge or information sufficient to form a belief as to
10 the truth thereof.

11 59. In answer to Paragraph 59, Mr. McClellan denies each and every
12 allegation in Paragraph 59 on the ground that he is without knowledge or
13 information sufficient to form a belief as to the truth thereof.

14 60. In answer to Paragraph 60, Mr. McClellan denies each and every
15 allegation in Paragraph 60 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 61. In answer to Paragraph 61, Mr. McClellan denies each and every
18 allegation in Paragraph 61 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 62. In answer to Paragraph 62, Mr. McClellan admits that, on November
21 6, 2006, McKesson announced its acquisition of Per Se Technologies, Inc. at \$28
22 per share, and that shares of Per Se Technologies stock closed at \$27.55 per share,
23 up approximately 13 percent from its prior day close of \$24.45 per share. Except as
24 so admitted, Mr. McClellan denies each and every allegation in Paragraph 62 on the
25 ground that he is without knowledge or information sufficient to form a belief as to
26 the truth thereof.

27 63. In answer to Paragraph 63, Mr. McClellan denies each and every
28 allegation in Paragraph 63 on the ground that he is without knowledge or

1 information sufficient to form a belief as to the truth thereof.

2 64. In answer to Paragraph 64, Mr. McClellan admits that he advised
3 Hellman & Friedman LLC with respect to due diligence and tax structuring in
4 connection with its possible acquisition of Kronos, Inc. and that he recorded time
5 on the Kronos matter in November 2006. Mr. McClellan admits that he signed an
6 amendment to a confidentiality agreement between Hellman & Friedman LLC and
7 Kronos. To the extent that the allegations in Paragraph 64 refer to the contents of a
8 confidentiality agreement or amendment thereto, those documents speak for
9 themselves and therefore no response from Mr. McClellan is required. Except as so
10 admitted, and to the extent any response is required, Mr. McClellan denies each and
11 every allegation in Paragraph 64 on the ground that he is without knowledge or
12 information sufficient to form a belief as to the truth thereof.

13 65. In answer to Paragraph 65, Mr. McClellan denies each and every
14 allegation in Paragraph 65 on the ground that he is without knowledge or
15 information sufficient to form a belief as to the truth thereof.

16 66. In answer to Paragraph 66, Mr. McClellan admits that he was aware at
17 some point in time that Hellman & Friedman LLC was seeking to acquire Kronos,
18 Inc. Except as so admitted, Mr. McClellan denies each and every allegation in
19 Paragraph 66 on the ground that he is without knowledge or information sufficient
20 to form a belief as to the truth thereof.

21 67. In answer to Paragraph 67, Mr. McClellan denies each and every
22 allegation in Paragraph 67.

23 68. In answer to Paragraph 68, Mr. McClellan denies that he disclosed or
24 misappropriated any confidential information as alleged in Paragraph 68. Except as
25 so denied, Mr. McClellan denies each and every allegation in Paragraph 68 on the
26 ground that he is without knowledge or information sufficient to form a belief as to
27 the truth thereof.

28 69. In answer to Paragraph 69, Mr. McClellan denies each and every

1 allegation in Paragraph 69 on the ground that he is without knowledge or
2 information sufficient to form a belief as to the truth thereof.

3 70. In answer to Paragraph 70, Mr. McClellan denies each and every
4 allegation in Paragraph 70 on the ground that he is without knowledge or
5 information sufficient to form a belief as to the truth thereof.

6 71. In answer to Paragraph 71, Mr. McClellan admits that in or about
7 February 2007, he stayed overnight at the Sanders' home in London while returning
8 from a business trip to Rome. Except as so admitted, Mr. McClellan denies each
9 and every allegation in Paragraph 71 on the ground that he is without knowledge or
10 information sufficient to form a belief as to the truth thereof.

11 72. In answer to Paragraph 72, Mr. McClellan denies each and every
12 allegation in Paragraph 72 on the ground that he is without knowledge or
13 information sufficient to form a belief as to the truth thereof.

14 73. In answer to Paragraph 73, Mr. McClellan denies each and every
15 allegation in Paragraph 73 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 74. In answer to Paragraph 74, Mr. McClellan denies each and every
18 allegation in Paragraph 74 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 75. In answer to Paragraph 75, Mr. McClellan denies each and every
21 allegation in Paragraph 75 on the ground that he is without knowledge or
22 information sufficient to form a belief as to the truth thereof.

23 76. In answer to Paragraph 76, Mr. McClellan denies each and every
24 allegation in Paragraph 76 on the ground that he is without knowledge or
25 information sufficient to form a belief as to the truth thereof.

26 77. In answer to Paragraph 77, Mr. McClellan denies each and every
27 allegation in Paragraph 77 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 78. In answer to Paragraph 78, Mr. McClellan denies each and every
2 allegation in Paragraph 78 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 79. In answer to Paragraph 79, Mr. McClellan denies each and every
5 allegation in Paragraph 79 on the ground that he is without knowledge or
6 information sufficient to form a belief as to the truth thereof.

7 80. In answer to Paragraph 80, Mr. McClellan admits that on March 23,
8 2007, Hellman & Friedman LLC and Kronos, Inc. announced the acquisition at \$55
9 per share, that shares of Kronos stock closed at \$53.11 per share, up approximately
10 14 percent from its prior day close of \$46.63 per share. Except as so admitted, Mr.
11 McClellan denies each and every allegation in Paragraph 80 on the ground that he
12 is without knowledge or information sufficient to form a belief as to the truth
13 thereof.

14 81. In answer to Paragraph 81, Mr. McClellan denies each and every
15 allegation in Paragraph 81 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 82. In answer to Paragraph 82, Mr. McClellan admits receiving an email
18 dated May 14, 2007 from a representative of a Deloitte client. To the extent that
19 the allegations in Paragraph 82 refer to that email, the document speaks for itself
20 and therefore no response from Mr. McClellan is required. Except as so admitted
21 and to the extent any response is required, Mr. McClellan denies each and every
22 allegation in Paragraph 82 on the ground that he is without knowledge or
23 information sufficient to form a belief as to the truth thereof.

24 83. In answer to Paragraph 83, Mr. McClellan admits that he was aware at
25 some point in time that a Deloitte client was seeking to acquire aQuantive, Inc.
26 Except as so admitted, Mr. McClellan denies each and every allegation in
27 Paragraph 83 on the ground that he is without knowledge or information sufficient
28 to form a belief as to the truth thereof.

1 84. In answer to Paragraph 84, Mr. McClellan denies each and every
2 allegation in Paragraph 84 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 85. In answer to Paragraph 85, Mr. McClellan denies each and every
5 allegation in Paragraph 85.

6 86. In answer to Paragraph 86, Mr. McClellan denies that he disclosed or
7 misappropriated any confidential information as alleged in Paragraph 86. Except as
8 so denied, Mr. McClellan denies each and every allegation in Paragraph 86 on the
9 ground that he is without knowledge or information sufficient to form a belief as to
10 the truth thereof.

11 87. In answer to Paragraph 87, Mr. McClellan denies each and every
12 allegation in Paragraph 87 on the ground that he is without knowledge or
13 information sufficient to form a belief as to the truth thereof.

14 88. In answer to Paragraph 88, Mr. McClellan denies each and every
15 allegation in Paragraph 88 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 89. In answer to Paragraph 89, Mr. McClellan denies each and every
18 allegation in Paragraph 89 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 90. In answer to Paragraph 90, Mr. McClellan denies each and every
21 allegation in Paragraph 90 on the ground that he is without knowledge or
22 information sufficient to form a belief as to the truth thereof.

23 91. In answer to Paragraph 91, Mr. McClellan admits that on May 18,
24 2007, Microsoft Corporation announced the acquisition of aQuantive, Inc. at \$66.50
25 per share, approximately 85 percent more than the prior day's closing price, and
26 that shares of aQuantive closed at \$63.79 per share, up approximately 78 percent
27 from its prior day close of \$35.87 per share. Except as so admitted, Mr. McClellan
28 denies each and every allegation in Paragraph 91 on the ground that he is without

1 knowledge or information sufficient to form a belief as to the truth thereof.

2 92. In answer to Paragraph 92, Mr. McClellan denies each and every
3 allegation in Paragraph 92 on the ground that he is without knowledge or
4 information sufficient to form a belief as to the truth thereof.

5 93. In answer to Paragraph 93, Mr. McClellan admits that he and Annabel
6 McClellan traveled to London in or about July and August 2007, and visited
7 Annabel McClellan's relatives, including the Sanderses. Except as so admitted,
8 Mr. McClellan denies each and every allegation in Paragraph 93 on the ground that
9 he is without knowledge or information sufficient to form a belief as to the truth
10 thereof.

11 94. In answer to Paragraph 94, Mr. McClellan denies each and every
12 allegation in Paragraph 94 on the ground that he is without knowledge or
13 information sufficient to form a belief as to the truth thereof.

14 95. In answer to Paragraph 95, Mr. McClellan denies each and every
15 allegation in Paragraph 95 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 96. In answer to Paragraph 96, Mr. McClellan denies each and every
18 allegation in Paragraph 96 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 97. In answer to Paragraph 97, Mr. McClellan denies each and every
21 allegation in Paragraph 97.

22 98. In answer to Paragraph 98, Mr. McClellan denies that he disclosed or
23 misappropriated any confidential information as alleged in Paragraph 98. Except as
24 so denied, Mr. McClellan denies each and every allegation in Paragraph 98 on the
25 ground that he is without knowledge or information sufficient to form a belief as to
26 the truth thereof.

27 99. In answer to Paragraph 99, Mr. McClellan denies each and every
28 allegation in Paragraph 99 on the ground that he is without knowledge or

1 information sufficient to form a belief as to the truth thereof.

2 100. In answer to Paragraph 100, Mr. McClellan denies each and every
3 allegation in Paragraph 100 on the ground that he is without knowledge or
4 information sufficient to form a belief as to the truth thereof.

5 101. In answer to Paragraph 101, Mr. McClellan denies each and every
6 allegation in Paragraph 101 on the ground that he is without knowledge or
7 information sufficient to form a belief as to the truth thereof.

8 102. In answer to Paragraph 102, Mr. McClellan denies each and every
9 allegation in Paragraph 102 on the ground that he is without knowledge or
10 information sufficient to form a belief as to the truth thereof.

11 103. In answer to Paragraph 103, Mr. McClellan admits that in or about
12 July and August 2007, he traveled to and from London. Except as so admitted, Mr.
13 McClellan denies each and every allegation in Paragraph 103 on the ground that he
14 is without knowledge or information sufficient to form a belief as to the truth
15 thereof.

16 104. In answer to Paragraph 104, Mr. McClellan denies that he engaged in
17 any “pattern of tipping and trading.” Except as so denied, Mr. McClellan denies
18 each and every allegation in Paragraph 104 on the ground that he is without
19 knowledge or information sufficient to form a belief as to the truth thereof.

20 105. In answer to Paragraph 105, Mr. McClellan denies each and every
21 allegation in Paragraph 105 on the ground that he is without knowledge or
22 information sufficient to form a belief as to the truth thereof.

23 106. In answer to Paragraph 106, Mr. McClellan denies each and every
24 allegation in Paragraph 106 on the ground that he is without knowledge or
25 information sufficient to form a belief as to the truth thereof.

26 107. In answer to Paragraph 107, Mr. McClellan denies each and every
27 allegation in Paragraph 107 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 108. In answer to Paragraph 108, Mr. McClellan denies each and every
2 allegation in Paragraph 108 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 109. In answer to Paragraph 109, Mr. McClellan denies each and every
5 allegation in Paragraph 109.

6 110. In answer to Paragraph 110, Mr. McClellan denies that he disclosed or
7 misappropriated any confidential information as alleged in Paragraph 110. Except
8 as so denied, Mr. McClellan denies each and every allegation in Paragraph 110 on
9 the ground that he is without knowledge or information sufficient to form a belief
10 as to the truth thereof.

11 111. In answer to Paragraph 111, Mr. McClellan denies each and every
12 allegation in Paragraph 111 on the ground that he is without knowledge or
13 information sufficient to form a belief as to the truth thereof.

14 112. In answer to Paragraph 112, Mr. McClellan denies each and every
15 allegation in Paragraph 112 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 113. In answer to Paragraph 113, Mr. McClellan denies each and every
18 allegation in Paragraph 113 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 114. In answer to Paragraph 114, Mr. McClellan admits that he recorded
21 time in connection with a client's potential acquisition of Getty Images, Inc. in
22 2007, and during the course of his work for that client he participated on conference
23 calls, worked on due diligence and helped prepare reports. Except as so admitted,
24 Mr. McClellan denies each and every allegation in Paragraph 114 on the ground
25 that he is without knowledge or information sufficient to form a belief as to the
26 truth thereof.

27 115. In answer to Paragraph 115, Mr. McClellan admits that he was aware
28 at some point in time that a Deloitte client sought to acquire Getty Images, Inc.

1 Except as so admitted, Mr. McClellan denies each and every allegation in
2 Paragraph 115 on the ground that he is without knowledge or information sufficient
3 to form a belief as to the truth thereof.

4 116. In answer to Paragraph 116, Mr. McClellan denies each and every
5 allegation in Paragraph 116 on the ground that he is without knowledge or
6 information sufficient to form a belief as to the truth thereof.

7 117. In answer to Paragraph 117, Mr. McClellan denies each and every
8 allegation in Paragraph 117.

9 118. In answer to Paragraph 118, Mr. McClellan denies that he disclosed or
10 misappropriated any confidential information as alleged in Paragraph 118. Except
11 as so denied, Mr. McClellan denies each and every allegation in Paragraph 118 on
12 the ground that he is without knowledge or information sufficient to form a belief
13 as to the truth thereof.

14 119. In answer to Paragraph 119, Mr. McClellan denies each and every
15 allegation in Paragraph 119 on the ground that he is without knowledge or
16 information sufficient to form a belief as to the truth thereof.

17 120. In answer to Paragraph 120, Mr. McClellan denies each and every
18 allegation in Paragraph 120 on the ground that he is without knowledge or
19 information sufficient to form a belief as to the truth thereof.

20 121. In answer to Paragraph 121, Mr. McClellan denies each and every
21 allegation in Paragraph 121 on the ground that he is without knowledge or
22 information sufficient to form a belief as to the truth thereof.

23 122. In answer to Paragraph 122, Mr. McClellan denies each and every
24 allegation in Paragraph 122 on the ground that he is without knowledge or
25 information sufficient to form a belief as to the truth thereof.

26 123. In answer to Paragraph 123, Mr. McClellan denies each and every
27 allegation in Paragraph 123 on the ground that he is without knowledge or
28 information sufficient to form a belief as to the truth thereof.

1 124. In answer to Paragraph 124, Mr. McClellan denies each and every
2 allegation in Paragraph 124 on the ground that he is without knowledge or
3 information sufficient to form a belief as to the truth thereof.

4 125. In answer to Paragraph 125, Mr. McClellan denies each and every
5 allegation in Paragraph 125 on the ground that he is without knowledge or
6 information sufficient to form a belief as to the truth thereof.

7 126. In answer to Paragraph 126, Mr. McClellan denies each and every
8 allegation in Paragraph 126 on the ground that he is without knowledge or
9 information sufficient to form a belief as to the truth thereof.

10 127. In answer to Paragraph 127, Mr. McClellan admits that on February
11 25, 2008 Hellman & Friedman LLC announced its acquisition of Getty Images,
12 Inc., and that on February 28, 2008 shares of Getty Images' stock closed at \$31.67
13 per share, up approximately 30 percent from its prior day close of \$24.45 per share.
14 Except as so admitted, Mr. McClellan denies each and every allegation in
15 Paragraph 127 on the ground that he is without knowledge or information sufficient
16 to form a belief as to the truth thereof.

17 128. In answer to Paragraph 128, Mr. McClellan incorporates by reference
18 his responses to the allegations in paragraphs 1 through 127 as if fully set forth
19 herein.

20 129. In answer to Paragraph 129, Mr. McClellan denies each and every
21 allegation in Paragraph 129.

22 130. In answer to Paragraph 130, Mr. McClellan denies that he obtained
23 material nonpublic information in breach of his duties of confidentiality and trust as
24 alleged in Paragraph 130. Except as so denied, Mr. McClellan denies each and
25 every allegation in Paragraph 130 on the ground that he is without knowledge or
26 information sufficient to form a belief as to the truth thereof.

27 131. In answer to Paragraph 131, Mr. McClellan denies each and every
28 allegation in Paragraph 131 relating to Mr. McClellan. Except as so denied, Mr.

1 McClellan denies each and every allegation in Paragraph 131 on the ground that he
2 is without knowledge or information sufficient to form a belief as to the truth
3 thereof.

4 132. In answer to Paragraph 132, Mr. McClellan denies each and every
5 allegation in Paragraph 132 relating to Mr. McClellan. Except as so denied, Mr.
6 McClellan denies each and every allegation in Paragraph 132 on the ground that he
7 is without knowledge or information sufficient to form a belief as to the truth
8 thereof.

9 133. In answer to Paragraph 133, Mr. McClellan denies each and every
10 allegation in Paragraph 133 relating to Mr. McClellan. Except as so denied, Mr.
11 McClellan denies each and every allegation in Paragraph 133 on the ground that he
12 is without knowledge or information sufficient to form a belief as to the truth
13 thereof.

14 134. In answer to Paragraph 134, Mr. McClellan denies each and every
15 allegation in Paragraph 134 relating to Mr. McClellan. Except as so denied, Mr.
16 McClellan denies each and every allegation in Paragraph 134 on the ground that he
17 is without knowledge or information sufficient to form a belief as to the truth
18 thereof.

PRAYER FOR RELIEF

Mr. McClellan denies that the SEC is entitled to any of the relief sought in subsections I-IV.

AFFIRMATIVE DEFENSES

23 Mr. McClellan asserts the following affirmative defenses. To the extent any
24 of the defenses, in whole or in part, serve merely to negate an element of the SEC's
25 cause of action, Mr. McClellan in no way seeks to relieve the SEC of its burden of
26 proof or persuasion on that element. Mr. McClellan hereby reserves the right to
27 assert additional defenses not asserted herein, as investigation and discovery may
28 reveal the existence of additional defenses not currently known to him. Mr.

1 McClellan further reserves all affirmative defenses available under federal law and
2 any applicable state law.

3 **FIRST AFFIRMATIVE DEFENSE**

4 The Complaint fails to state a claim upon which relief can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The Court lacks jurisdiction over the alleged claims.

7 **THIRD AFFIRMATIVE DEFENSE**

8 The SEC is not entitled to the relief it seeks.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 The Complaint fails to plead with particularity the required elements of
11 fraud.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 Any recovery on the SEC's Complaint, or any purported cause of action
14 alleged therein, is barred because Mr. McClellan's disputed conduct was privileged
15 and/or justified.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Mr. McClellan is not liable for the SEC's claim because he acted at all times
18 in good faith, with reasonable care, and/or with due diligence in carrying out his
19 responsibilities and duties, and did not directly or indirectly induce any acts that
20 could constitute a cause of action. He did not know, and in the exercise of
21 reasonable care could not have known, of any facts by which liability could be
22 alleged to exist.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Mr. McClellan asserts that he is not liable for any harm or violation alleged
25 in the Complaint because he acted at all time in good faith and in conformity with
26 the rules, regulations, orders, and/or interpretations of the SEC applicable at the
27 relevant time.

28

EIGHTH AFFIRMATIVE DEFENSE

The SEC's claim is barred, in whole or in part, by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

The SEC's claim is barred, in whole or in part, under such equitable doctrines as the evidence demonstrates and as are permissible to be asserted against the SEC.

TENTH AFFIRMATIVE DEFENSE

Mr. McClellan is not responsible for acts or omissions allegedly committed by others.

PRAAYER

WHEREFORE, Defendant Arnold A. McClellan prays that judgment in his favor be entered as follows:

1. That the Complaint, and each and every purported claim for relief contained therein, be dismissed with prejudice;

2. That the SEC take nothing by reason of its Complaint and that judgment be rendered in favor of Mr. McClellan;

3. That Mr. McClellan be granted such other and further relief as the Court deems just and proper.

Dated: April 20, 2011

DANIEL BOOKIN
SHARON M. BUNZEL
O'MELVENY & MYERS LLP

By: /s/ *Daniel Bookin*

By: *S. Daniel Bookin*
Daniel Bookin
Attorneys for Defendant
Arnold A. McClellan

1 **DEMAND FOR JURY TRIAL**
2

3 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant
4 Arnold A. McClellan requests a trial by jury on all issues so triable.
5

6 Dated: April 20, 2011
7

8 DANIEL BOOKIN
9 SHARON M. BUNZEL
10 O'MELVENY & MYERS LLP
11

12 By: /s/ Daniel Bookin
13 Daniel Bookin
14 Attorneys for Defendant
15 Arnold A. McClellan
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